

Applicants assume that the Examiner intends to use the elected species to guide his search, but will allow the entire set of claims to be patented if no basis is found for rejection. However, Applicants state for the record that they believe that the genus claimed in claim 1 should be examined and patented as a whole, even though species within that genus perhaps may be patentably separate and distinct. This is permissible under the law, and it is common practice to allow Applicants to define the scope of their invention. It would be impractical for Applicants to patent each species of the genus separately.

Applicants believe that the entire claimed subject matter is sufficiently related in terms of utility, chemical structure, and methods of making and using, to be examined together as a single invention. It is improper for the Examiner to refuse to Examiner that which Applicants regard as their invention where, as here, unity of invention exists.

If the Applicants are required to file a multitude of patent applications to cover the species in the present application, this will create an unduly great burden on Applicants in terms of costs and time, as well as burden the patent office with a large number of applications covering related subject matter that would be more efficiently searched and examined together. There would also be a greater burden on the public in trying to determine what subject matter is under patent in any infringement search, if multiple patents issue instead of just one.

An election of species requirement is tantamount to a restriction requirement, and Applicants expressly reserve the right to file one or more divisional or continuation applications in the event that the Examiner does not permit the entire invention to remain in this application.

Applicants wish to make it clear for the record that nothing in the foregoing remarks is intended to be an admission or to state a position with regard to whether any species is patentably distinct or independent from any other species or from the genus as a whole or from any sub-genus of the claimed subject matter.

Applicants respectfully request withdrawal of the election requirement and advancement of the case to issue.


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